IN THE HIGH COURT OF DELHI AT NEW DELHI

CM (M) 1273/2007

Judgment delivered on: September 17, 2007

M/s Trend Setters ..... Petitioner
Through: Mr. Sunil Fernandes with
Mr. Rajat, Advs.

versus

North Delhi Power Ltd. ..... Respondent
Through: Mr. K. Datta, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

CM No. 12760/2007

Allowed subject to all just exceptions.

CM stands disposed of.

CM (M) 1273/2007

By this petition the petitioner seeks to challenge the impugned order dated 20th July, 2007 passed by the learned Trial Court whereby the Trial Court has allowed the application of the respondent filed under Section 151 CPC. The respondent/defendant had moved the said application under Section 151 CPC so as to place its written statement on record for defending the suit filed by the present petitioner on its merits. The said application of the respondent/defendant was allowed by the Trial Court and the written statement filed by the respondent was directed to be taken on record subject to imposition of costs of Rs. 4,000/-. Aggrieved with the said order the petitioner has preferred the present writ petition. I have heard Shri Sunil Fernandes, learned counsel for the petitioner and Shri K. Datta, learned counsel for the respondent, who has appeared at the admission stage. Counsel for the petitioner has taken serious exception to the filing of the application by the respondent/defendant under Section 151 CPC ignoring the specific statutory provision ordained in the CPC to deal with the situation and contingency envisaged therein.

Counsel for the petitioner contends that the respondent has filed an application under Section 151 CPC although there is a specific provision in the CPC to take recourse to Order 8 Rule 1 CPC. Counsel for the petitioner further contends that once the specific provision is there in the Statute, the parties cannot invoke the inherent powers of the Court under Section 151 CPC. In support of his arguments counsel for the petitioner has placed reliance on the judgments of the Supreme Court reported in **(2005) 2 SCC 256 titled National Institute of Mental Health & Neuro Sciences vs C. Parameshwara**; and in **(1999) 1 SCC 37 titled Mahabir Prasad Singh vs Jacks Aviation Pvt. Ltd.** Counsel for the petitioner has also placed reliance on the judgment of the Supreme Court reported in **(2005) 4 SCC 480 titled Kailash vs. Nanhku and Ors.** to contend that the extension can only be granted by the Court as an exception after taking into consideration the reasons assigned by the defendant and also duly recorded in writing by the Court in its order to its satisfaction. Counsel contends that no plausible reasons were advanced by the respondent in the application moved under Section 151 CPC for the condonation of such a long delay. Counsel for the respondent, who is appearing on advance notice, submits

that sufficient reasons have been given by the respondent in paras No. 4 and 5 of the reply placed at pages 45 and 46 of the paper book. Counsel submits that inspection in question is related to the period before unbuilding of the erstwhile DVB and coming into existence of the present respondent/defendant. Counsel states that the relevant file pertaining to the inspection and other documents of the present case were not traceable with the concerned district of the respondent, therefore, parawise comments could not be prepared by the legal department of the respondent/defendant and, therefore, the written statement could not be placed before the Court within the period of 90 days from the date of the service.

The Hon'ble Supreme Court in the case of **Kailash vs Nankhu & Ors. (supra)** has held that the said provision of Order 8 Rule 1 CPC is directory in nature. The Hon'ble Supreme Court has also held that the person seeking time beyond 90 days for filing the written statement must give reasons for the delay in filing the written statement. The Apex Court has also held that the Court is not powerless to permit a written statement being filed if the Court may require such written statement and the Court need not pronounce judgment against the defendant, who failed to file

the written statement. The Court has also held that all the rules of procedure are the handmaid of justice and the language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. The Hon'ble Supreme Court has also held that no straitjacket formula can be laid down for examining the circumstances, but however the time schedule contemplated by Order 8 Rule 1 CPC shall be the rule and departure therefrom an exception, which can be only made for satisfactory and sufficient reasons. It would be worthwhile to refer to the following paras of the said judgment of the Apex Court reported in **Kailash vs Nanhku (Supra)**

> **"28.** All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in *Sushil Kumar Sen* v. *State of Bihar* 10 are pertinent: (SCC p. 777, paras 5-6)

"The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.
The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence — processual, as much as substantive."

29. In *State of Punjab* v. *Shamlal Murari* 11 the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that: (SCC p. 720)

"Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

In *Ghanshyam Dass* v. *Dominion of India* 12 the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.

30. It is also to be noted that though the power of the court under the proviso appended to Rule 1 Order 8 is circumscribed by the words "shall not be later than ninety days" but the consequences flowing from non-extension of time are not specifically provided for though they may be read in by necessary implication. Merely because a provision of law is couched in a negative language implying mandatory

character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.

32. Our attention has also been invited to a few other provisions such as Rules 9 and 10 of Order 8. In spite of the time-limit appointed by Rule 1 having expired, the court is not powerless to permit a written statement being filed if the court may require such written statement. Under Rule 10, the court need not necessarily pronounce judgment against the defendant who failed to file written statement as required by Rule 1 or Rule 9. The court may still make such other order in relation to the suit as it thinks fit.

43. A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on an affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the court that the prayer was founded on grounds which do exist."

Since the matter is right at the very initial stage, where only question before the Trial Court was to examine whether in the given circumstances the respondent was to be given the

permission to place on record the written statement or not. The application in issue has been filed by the respondent invoking Section 151 CPC in place of Order 8 Rule 1 CPC. Although the respondent could have filed the said application under Order 8 Rule 1 CPC, but may be because the period of 90 days has already expired, therefore the respondent/defendant appear to have taken recourse to invoke the inherent powers of the Court under Section 151 CPC. I, therefore, do not find myself in agreement with the counsel for the petitioner that the Trial Court should not have entertained the application as filed by the respondent under Section 151 CPC in the presence of express statutory provision ordained in Order 8 Rule 1 CPC. Once the Hon'ble Apex Court has said that the provision of Order 8 Rule 1 itself is directory in nature, therefore, no serious fault can be found on the part of the respondent in seeking the relief as envisaged under Order 8 Rule 1 CPC by labeling the application under Section 151 CPC. As regards the discretion exercised by the Trial Court in condoning the delay and permitting the respondent to file the written statement, I do not feel inclined to interfere in the discretion exercised by the Court while exercising jurisdiction under Article 227 of the Constitution. Written

statement of the respondent is already on record and the delay period has been taken due care of by the Trial Court by awarding costs in favour of the petitioner.

In view of the above discussion I do not find any merit in the present petition. At this stage counsel for the petitioner urges that at least directions be given to the Trial Court for expeditious disposal of the case. Since there is already delay on the part of the respondent in filing the written statement, I see no reason to decline the oral prayer made by the counsel for the petitioner for expeditious disposal of the case as the petitioner has already deposited about Rs. 6 lakhs in the Trial Court.

In the light of the submission made by the counsel for the petitioner, the suit No. 26/2006 be tried by the Trial Court as expeditiously as possible.

The petition stands disposed of.

September 17, 2007 **KAILASH GAMBHIR, J**
rkr